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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D., 1958.

No. 940

STELLA C. DAVIS and BETTY HORRIGAN,

Petitioners,

vs.

RAY M. FOREMAN, KENNETH CLAPPER, and CLYDE MEACHUM,

Respondents.

Petition For Writ of Certiorari To The United States Court of Appeals For The Seventh Circuit.

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REPORT OF OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Seventh Circuit is set forth in an appendix "A" hereto.

The United States District Court of the Eastern District of Illinois being the trial court below, which dismissed the plaintiffs' complaint and denied their Petition to Review and Vacate Order of June 3, 1957 and Affidavit in Support, issued no written opinions.

JURISDICTION.

The judgment of the District Court was entered on June 3, 1957 (R. 80-82) and on July 5, 1957, said court entered an Order denying their Petition to Review and Vacate Order of June 3, 1957 and Affidavit in Support (R. 95-96) and suit to stand dismissed.

On July 19, 1957, plaintiffs filed their Notice of Appeal, and on September 23, 1957, filed their Appendix and Brief for the Appellants in the U.S. Court of Appeals, Seventh Circuit. On January 22, 1958, the Court of Appeals affirmed the judgment of the District Court, and Honorable Parkinson, Circuit Judge filed his opinion.

This petition is filed within ninety days from entry of judgment on appeal, affirming dismissal of their complaint, and accordingly the jurisdiction of this Court to review the Order of the United States Court of Appeals, for Seventh Circuit by a Writ of Certiorari is invoked under title 28 U.S.C. sections 1254 (1) (3), also Rule 56 (of 1895) U.S.C. 28, and Part V, Rule 19 (1) (b) of the Revised Rule of the Supreme Court of United States, (28

U.S.C. sec. 1331, 1343, 1348 & 1442 (3) U. S. Constitution Amendment XIV, sec. 1; Article IV sec. 1 & 2 and Article VII; see *Alesna* v. *Rice* D.C. Hawaii 1947, 69 F. Supp. 897 and 74 F Supp. 865, *Hardy* v. *Collins* D.C. Cal. 1948, 80 F. Supp. and *Rosenblum* v. *Rosenblum* 1943-42 New York, 52d, 626 181 Misc. 78 and In Re Quarles, Ga. 1895, 15 S. Ct. 959, 158 U.S. 537, 39 L ed 1080, and *Carroll* v. *U.S.* 267 132, Ex Parte Virginia 100 U.S. 346-F, and U.S.C. 5 sec. 139 E & F. U.S.C. 18, sec. 241, 1707, 1708.

QUESTIONS PRESENTED.

This case involves an action for damages for conspiracy and fraud to effectuate purpose of impeding due course of Justice in an attempt to deny the petitioners equal protection of the laws, also under "COLOR OF OFFICE", by an Act unjustly done by countenance of an office grounded upon Corruption to which the office was a show and color whereas the respondent, Ray M. Foreman was an assistant U. S. Attorney aided by Kenneth Clapper, his associate attorney and at a later day by a Federal Referee in Bankruptcy, respondent, Clyde Meachum, who had knowledge and power to prevent in furtherance of conspiracy and fraud upon the petitioners but instead aided respondents. Petitioners invoke Title 28 U.S.C. sections 1331, 1343, 1348 and 1442 (3) Title 28 U.S.C. Rule 56 (1895) 5 U.S.C. sec. 139 (e) (F).

The questions presented by this petition are set heretofore: Whether a Trial Court commits reversible error in dismissing the Complaint together with evidence and affidavits presented and the U.S. Court of Appeals, Seventh Circuit affirms the dismissal and judgment:

1. When violations of Constitutional Rights under amendment XIV sec. 1 and the 4th and 5th amendments are asserted.

2. The respondents were acting under color of State Laws they being attorneys for Administrator, a national bank who came in by fraud under the Probate Act of Illinois—Chapter 3, Administration of Estates. Also under Chapter 3, sec. 227, 299, and sec. 335 and other sections of said Probate Act. The courts ignored that respondents, Ray M. Foreman and Clyde Meachum were U. S. Attorneys and officers of the Court and on federal pay in a "Conflict of Interest" case.

3. The Trial Court and the U. S. Court of Appeals ignored the statements of the petitioners that they had complained to the Federal Bureau of Investigation as the result of their complaints to them have been threatened and intimidated and oppressed in the free exercise of this right and because of their having exercised it. That the right of a citizen informing of violation of our laws, like the right of a prisoner in custody upon a charge of such violation to be protected against lawless violence, does not depend upon any of the amendments to the Constitution, but arises out of the creation and establishment by the Constitution itself.

4. The Trial Court and the Court of Appeals ignored the fact Fraud or using the Forms of Law to further the ends of Justice, or for commission of any other Act of personal dishonesty and oppression by attorneys they become the SUMMARY JURISDICTION of the Court.

5. The Trial Court and the Court of Appeals overlooked the fact that several of the respondents were "officers" in the Department of Justice and the Courts and were involved in a "State Matter" wherein a National Bank asserted this right, under State Laws, but still asserted a federal right by hiring federal attorneys who came into this State action of Probate by fraud, misrepresentation and deceit and conspiracy upon the petitioners.

6. Federal Courts have exclusive jurisdiction of crimes committed by National Bank officers and agents and the Supreme Court of the U.S. has exclusive jurisdiction over suits against U.S. and Assistant U.S. attorneys in their official capacity as it is a suit by or against the government, and the Court of Appeals and the Trial Court ignored the allegations by petitioner, Stella C. Davis that the respondent, Ray M. Foreman entered her cause of action officially as a government attorney, and eventually by conspiracy and fraud became the attorney for a National Bank and left the petitioners without legal protection wherein no attorney would take them thereby forcing them to petition the courts for legal counsel and being denied that protection.

STATEMENT OF CASE.

This action was brought under U.S.C. 28, sec. 1331, federal question and amount in controversy and section 1343 violation of their Civil Rights and under section 1442(1) (3) and any Officer of U.S.A. or any agency acting under him for any Act under "Color" of such office or right and authority claimed under any "Act of Congress for apprehension of criminals or collection of revenue and section 1442(3) all of Title 28 U.S.C. as officers of the "Courts of U.S.A." and for any Act under "Color of Office" of performance of their duties in which the defendant, Ray M. Foreman as an Assistant U.S. Attorney for the Eastern Illinois Federal District obtained confidential information, facts and the sum of Ten Dollars ($10.00) in his official position as a government official and on government property and used this information, evidence and facts eventually in many Courts to the plaintiffs' detriment (Tr. 1-4, 24, 24-26, 31-35) aided by the other defendants.

That the defendant, Ray M. Foreman, had access to the confidential files of the federal agencies pursuant to sections 139 F.A and E of Title 5 and from the Federal Bureau of Investigation of which certain information was supplied to these agencies prior the entrance of the defendants into the so called Probate Action by the petitioners in the year of 1950 and thereafter, and prior the death of their father, William Davidit[illegible]. (R. 24-30 and 31-41). The respondent used this confidential information to their financial and legal detriment and testified against them in various courts thereby endangering their lives as informers by such disclosures in open court. In many of these acts, he was aided first by the respondent, Kenneth Clapper, and at a later date by Clyde Meachum as U.S.

Referee in bankruptcy who became his legal partner as well as the legal counsel of the National Bank of Mattoon, Mattoon, Illinois and the Respondent, Ray M. Foreman, their attorney and eventually Kenneth Clapper who aided Ray M. Foreman on 4/2/51 and 4/3/51 in this conspiracy and fraud upon petitioners.

Ray M. Foreman wrote in the National Bank of Mattoon to be administrator on the Fraudulent Petition for letters of administration.

Both the respondents Ray M. Foreman and Kenneth Clapper together with the bank officials and employees were instrumentalities in the so-called hearing in the Coles County Probate Court on 4/3/51 wherein there is recorded a hearing and argument of counsel for the appointment as administrator of estate of William Daviditis, alias William Davis to which the heirs-at-law had no knowledge, no service of "Notice of Hearing", nor did they attend, or file any written "Waiver of Notice of Hearing."

There was an interstate conspiracy together with Foreman, the National Bank of Mattoon and Elliott Seymour, a San Francisco, California, attorney who shared in the estate on fees. When petitioners became aware of the fraud and conspiracy upon them by the National Bank of Mattoon and the attorneys, they protested these acts to Foreman many times and he threatened both petitioners at various times, testified falsely against them in various court and suborned others to perjure themselves upon his and the administrator's behalf.

ARGUMENT.

I.

The Federal District Court was vested with jurisdiction of suit seeking redress for deprivation of Civil Rights guaranteed by the United States Constitution, Amendment 14, regardless of diversity of Citizenship or amount in controversy.

This action involves "Officers of the U. S. representing a National Bank which is subject to the paramount authority of the United States. These federal men under a salary of the government, were also getting an outside salary from an Estate wherein the bank came in as Administrator by Conspiracy and Fraud instigated by the defendant-appellee, Ray M. Foreman, Assistant U.S. Attorney, aided by Kenneth Clapper, and at a later date by Clyde Meachum, U.S. Referee in Bankruptcy.

There was a "Conflict of Interest" between the widow of the decedent (Tr. 21, 22, 46, 47, 49, 52, 53, 54, 55, 61, 62), the heirs-at-law and the National Bank of Mattoon, Illinois in 1949 and 1950 prior to the death of William Daviditis, alias William Davis (Tr. 21-22) and in view of such conflict of interest it fraudulently became the administrator of the estate of the decedent, whereas they had formerly been Trustees in a fraudulent Separate Maintenance Action in the City Court of Mattoon, Mattoon, Illinois, 49-C-50 (Tr. 21-22) wherein they were defendants with the decedent and the widow, plaintiff. (Tr. 21-22). Bradley 7 Wall 364, 19 L. ed. December 1868, and *Cummins* v. *U.S. Ark.*, 1916, 232 F. 844, 147 C.C.A. 38.

Under U.S.C. 12 sec. 248 (K) the bank is given the right to act as administrator, etc. and they are not required to execute bonds under the Probate Act of Illinois.

We submit that this Rev. Stat. Chapter 3 sec. 335 and Rev. Stat. Chapter 3 sec. 299 to recover property and discover information regarding same is in contravention of the law under U.S.C. Title 12 sec. 248, and unconstitutional when it gives an administrator, trustee, etc. who is clothed under the Federal and State power and who is in direct conflict with the rights and interest of the heirs and widow of the decedent, and who usurps the power to refuse access under the law to the decedent's dealings, financial and otherwise, and who is being accused of fraud and conspiracy and other misapplications and violations of the National Banking Act is in a position to forever more deny them of access to the confidential records of all trusteeships, conservatorships, etc. which the bank had prior to the death of William Daviditis, alias William Davis, thereby being in direct conflict of the appellants' interest when there was adverse litigation and the bank was the defendant together with the decedent and the widow the plaintiff (Tr. 21-22).

The appellee, Ray M. Foreman, together with Kenneth Clapper and Elizabeth McVey, aided by E. C. Bauer, caused a fraudulent petition for letters of administration issued, with a fraudulent acknowledgment affixed to same by Elizabeth McVey, Ill. Rev. Chpt. 38 sec. 321 and 322. No hearing was held as far as the heirs and widow were concerned and no notice of this alleged hearing served upon them, neither did they waive this right in writing according to the Probate Law. Illegal Searches by the appellees, Ray M. Foreman and Kenneth Clapper, and getting accesses into the safety deposit box number 932 of the decedent without the "Due Process of the Law" on a federal working day and protection of the rights of the heirs and widow. *Colorado Nat'l. Bank of Denver* v. *Bedfore*, Colo. 1940; *Potter* v. *U.S.* 155, 438, 15 S. Ct. 144, 39

L. ed. 214, and *Carroll* v. *U. S.*, 267 U. S. 132. Unlawful Search may violate the 4th Amendment to the Constitution by Subterfuge of Fraud. Bradley 7 Wall. 364 19 L. ed. 214, December 1868; *Whitlock* v. *McClusky*, 91 Ill. 582.

II.

It is the right of every private citizen of the United States to inform an F.B.I. Agent, Treasury Agent and etc. of Violation of Internal Revenue Laws or other United States Laws under Rule 56 of U.S.C. Title 28.

In Re Quarles, Ga. 1895, 15 S. Ct. 959, 158 U.S. 537, 39 L. ed. 1080. The appellants did inform the F.B.I. on the National Bank of Mattoon, Mattoon, Illinois and its official, employee, and others. That as the result of such information and disclosure they were oppressed, threatened and intimidated, and more so by the defendant, appellee, Ray M. Foreman, U. S. Assistant Attorney involved as an attorney for the National Bank of Mattoon in their late father's and husband's estate due to the prior conflicts of interests. This right to inform is secured by the Constitution and a conspiracy to injure, oppress, threaten or intimidate them in the free exercise or enjoyment of this right, or because of their having exercised it may be punishable by an "Act of Congress", (Tr. pp. 3, 24, 25, 26, 31, 32, 33, 35, 38, 39, 40, 41).

III.

Where existence of fiduciary relationship has been established, Law presumes that transactions between parties by which dominant party has profited are fraudulent.

Stephenson v. *Kidecheck*, 919 N. E. 2d 542, 410, Ill. 139.

IV.

In the absence of counter-affidavits averments contained in the affidavits and supported by Exhibits by the Plaintiffs in support of their Reply Brief must be taken as true.

Leitch v. *Hine*, 393 Ill. 211, 218.

Brandt v. *St. Paul Mercury Indemnity Co.*, 285, Ill. 212, 217.

V.

"Wilful" in the Act of Congress of 1882, 22 Stat. at L. 166, Title 13 imposing a penalty on a National Bank Officer or agent on wilful violations of the law implies a knowledge and purpose to do wrong. (Tr. 46, 47, 61, 62, 71 thru 78.)

Prescott v. *Haughey*, C.C. in 18956 S. F. 569.

VI.

Rule 9, Civil Rules of Federal Procedure, "Under this rule requiring that averments of Fraud be stated with Particularity complaint alleging Fraud was not subject to Objection that it contained redundant, immaterial, impertinent or scandalous allegations.

Israel v. *Alexander*, D. C. N. Y. 1942 50 F. Supp. 1007.

VII.

That the appellants petitioned the Court for an attorney and were denied same in Court and in Court they made an Oral Motion to transfer their cause of action to the Criminal Side of the Docket and were denied this too.

CONCLUSION.

It is respectfully submitted that the record of this case presents issues of such basic importance to the furtherance of justice in the Courts of the United States, wherein the petitioners were complainants to the F.B.I. and other Federal agencies and the respondents, attorneys, and two of them former Officers of the U.S. and Justice Department, were involved together with a National bank, as administrator and they as its attorneys to the financial and legal detriment of the petitioners. That the decision of the United States Court of Appeals for the Seventh Circuit be reversed and the cause of action be remanded to the District Court for a trial by jury on evidence, witnesses and facts to be presented by the petitioners, or whatever other Relef this Honorable Court gives them.

Respectfully submitted,

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APPENDIX "A"

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit
No. 12111 September Term 1957—January Session 1958
Stella C. Davis and Betty Horrigan,
Plaintiffs-Appellants
vs.
Ray M. Foreman, Kenneth Clapper
and Clyde Meachum,
Defendants-Appellees.
Appeal from the United States District Court
for the Eastern District of Illinois.

January 22, 1958

Before MAJOR, FINNEGAN and PARKINSON, Circuit Judges.

PARKINSON, Circuit Judge. The plaintiffs, Stella C. Davis and Betty Horrigan, both of Chicago, Illinois, filed a complaint in the District Court for the Eastern District of Illinois against the defendants of Danville, Illinois asserting therein that jurisdiction "is based on the following: Title 28-1331, section 1343, section 1442 (3) title 18—sec. 241-1707 and 1708 and sec. 1343 and sec. 1348 title 28 of The U.S. Code." Diversity of citizenship is not alleged. In fact the complaint shows upon its face that all of the parties are residents of Illinois.

In oral argument before this court the plaintiffs contend that jurisdiction is based on a violation of their civil rights under the Fourteenth Amendment and apparently have abandoned any claim to jurisdiction under Title 18

U.S.C.A. sec. 241, 1707 and 1708 and Title 28 U.S.C.A. sec. 1331, 1348 and 1442(3). Of course, the District Court would have no jurisdiction of the claim attempted to be stated in the complaint under any of these six sections of the Code.

The complaint attempts to state a claim for damages by reason of a conspiracy entered into by the defendants on April 2, and 3, 1951 to defraud the plaintiffs. Although the plaintiffs allege that the defendant Ray M. Foreman obtained confidential information and facts from them as Assistant United States Attorney he is charged with having released such information without their consent and using it as a private individual only. Hence, whatever acts are alleged to have been done by the defendants were done by them in their capacity as private individuals.

The defendants filed a motion to dismiss upon the grounds that the District Court did not have jurisdiction over the subject matter and the claim was barred by the Statute of Limitations. The District Court granted the motion and dismissed the complaint. This appeal followed.

The purpose of the Civil Rights Act is to enforce the Fourteenth Amendment. This amendment applies only to state action. *Shelly* v. *Kraemer*, 1948, 334 U.S. 1. A complaint which fails to allege that the defendants acted or claimed to act under color of law does not confer jurisdiction on a federal court under the Civil Rights Act and should be dismissed. *Shemaitis* v. *Froemke*, 7 Cir., 1951, 189 F. 2d 963, 964. The Civil Rights Act does not protect one from invasion of private rights by an individual action. *Williams* v. *Yellow Cab Co.*, 3 Cir., 1952, 200 F. 2d 302, 307 unless two or more persons conspire to deprive a per-

son or class of persons of the equal protection of the laws or of equal privileges and immunities under the law or for the purpose of preventing or hindering the constituted authorities from giving or securing to all persons the equal protection of the laws. *Collins* v. *Hardyman*, 1951, 341 U.S. 651, 660-661. Absent diversity of citizenship, the complaint totally fails to allege any facts which confer jurisdiction on a federal court.

We have here a classic example of what occurs when laymen attempt to institute a lawsuit without the benefit of legal counsel. With but rare exception the end result is needless harassment of the defendants, fruitless endeavor by the plaintiffs and unnecessary burden upon the courts.

The judgment of the District Court is Affirmed.

FINNEGAN, Circuit Judge. Concurring. Without accepting all that is said in this opinion, I join with my brothers on the result reached approving the district judge's dismissal of the complaint for jurisdictional reasons.

A true Copy:
Teste:

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Clerk of the United States Court of
Appeals for the Seventh Circuit.